

ANDERSON & KREIGER LLP

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October 31, 2005

By Email and By Federal Express

Waste Management Council
Attn: Mr. Michael Sclafani, Appeals Clerk
c/o DES Legal Unit
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

RECEIVED

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Re: In re Regenesis Corporation
WMC Nos: 05-09-WMC, 05-10-WMC, and 05-11-WMC (consolidated appeals)

Dear Mr. Sclafani:

I enclose for filing in the above-referenced consolidated matters are an original and 20 copies of the "Memorandum of Appellant/Intervenor CFNH in Support of its Standing and in Support of the Council's Jurisdiction."

Please call me with any questions. Thank you.

COPY

Jeffrey L. Roelofs

Enclosure

cc: Edward A. Haffer, Esq. (by email and mail)
Jennifer J. Patterson, Esq. (by email and mail)
Barry Needleman, Esq. (by email and mail)
John E. Friberg, Jr., Esq. (by email and mail)
Ronald J. Lajoie, Esq. (by email and mail)

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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WASTE MANAGEMENT COUNCIL

)	
)	WMC NO.: 05-09-WMC
REGENESIS CORPORATION)	05-10-WMC
1994 Maple Street)	05-11-WMC
West Hopkinton, NH 03229)	
)	APPEAL OF LICENSE
)	REVOCATION
Re: Solid Waste Permit No. DES-SW-SP-002)	
Regenesi Corporation)	DES DOCKET NO. 04-010
West Hopkinton)	
)	

**MEMORANDUM OF APPELLANT/INTERVENOR CFNH
IN SUPPORT OF ITS STANDING AND
IN SUPPORT OF THE COUNCIL'S JURISDICTION**

The Appellant and Intervenor, Citizens for a Future New Hampshire ("CFNH"), by and through its attorney, Jeffrey Roelofs of Anderson & Kreiger LLP, submit this memorandum to facilitate the Waste Management Council's ("Council") consideration of threshold issues, including standing and jurisdiction. CFNH submits this memorandum (1) in support of its own appeal from the decision at issue (and related petition to intervene), and (2) in further support of its petition to intervene in the appeal filed by Regenesi Corporation ("Regenesi").

PROCEDURAL BACKGROUND

In this matter, CFNH appeals the "Decision on Proposed Revocation of Solid Waste Permit," issued by Presiding Officer Michael J. Walls of the New Hampshire Department of Environmental Services ("DES") on June 23, 2005 (the "Decision"). The appeal relies upon several grounds, which may be broken down into three groups of

issues: (1) rejection of relief that CFNH sought from DES, (2) rulings depriving CFNH of its rights, as a party below, to receive discovery and to question witnesses regarding relevant matters, and (3) the adverse ruling on an issue specifically raised by DES' Amended Notice of Proposed License Action: the question of abutter notice to CFNH's members – an argument pressed by CFNH and no other party.

First, CFNH challenges the rejection of its claim that the Solid Waste Permit should have been revoked because of the applicants' lack of reliability and integrity. In the Decision, Presiding Officer Walls revoked Solid Waste Permit No. DES-SW-SP-002 (the "Permit") on certain grounds, but erroneously failed to determine that Bio Energy/Regenesis (the "Applicant") and their officials lack the reliability and integrity to serve as solid waste licensees. His decision leaves open to the Applicant an avenue to attempt to cure the deficiencies that led to revocation. The revocation is therefore "without prejudice" in the legal sense of that phrase, in that it leaves open the possibility of Regenesis officials' reapplying for a solid waste permit and potentially operating a facility that will involve the transport, storage, incineration and generation of thousands of tons of solid waste containing hazardous material and that will be the largest source of lead emissions to the air in New Hampshire – posing a significant threat to public health and the environment. Presiding Officer Walls should have issued a decision "with prejudice" – that is, a decision that would preclude further applications by the officials who lack the requisite integrity and reliability.

Second, Presiding Officer Walls issued rulings that adversely affected the rights of CFNH, as an intervenor, participating as a party in the proceedings below. For instance, he denied discovery and questioning into issues relating to the key issue of the

Applicant's reliability and integrity. In addition, after denying the right of discovery and questioning into "advice of counsel," Presiding Officer Walls relied in his Decision upon an "advice of counsel" argument that the Applicant waived (if it made it at all) and which the record did not substantiate.

Third, Presiding Officer Walls also erred in concluding that Bio Energy and/or Regenesys provided proper notice to the public – including one or more members of CFNH – pursuant to Env-Wm 303.05(d) in connection with their solid waste permit applications when they sent notices to their corporate affiliates and not to abutters to those affiliates. In that regard, the Applicant admits that it did not notify CFNH member Grady until May 7, 2003 (hearing exhibit 42) – long after the applications at issue and even after the permits at issue, which were granted on May 28, 2002 (Exhibit 13) and March 28, 2003 (Exhibit 16). CFNH specifically raised that issue in Citizens for a Future New Hampshire v. Bio Energy, LLC, Merrimack County Superior Court No. 04-E-387 ("CFNH Action"). The defendants in the CFNH Action argued that the matter should be dismissed because DES should decide the questions raised in the petition to the Court.

CFNH's motion to intervene in Regenesys' appeal addresses not only these issues, but all questions raised by Regenesys on appeal.

ARGUMENT

I. LEGAL STANDARD

Env-WMC 204.02(b)(5) provides that any person filing a notice of appeal¹ must give "[a] clear and concise statement as to ... why the appellant has standing to bring the

¹ The WMC Rules define the "parties" to appeals of (1) an administrative order; (2) the denial of a permit application; and (3) the issuance of a permit. Env-WMC 204.06. The Rules do not expressly cover appeals from permit revocation decisions, although this type of final agency action is clearly within the purview of "department decisions" contemplated by RSA c. 21-O:14, I. The Permit Decision at issue here also

appeal, **for instance**, why the appellant will suffer a direct and adverse [e]ffect as a result of the decision being appealed in a way that is more than any impact of the decision on the general public.” [emphasis added]. As discussed below, this can be met by two showings:

1. The appellant is more affected than the general public; and
2. The appellant will suffer a direct and adverse effect.

These two non-exclusive criteria are discussed below, but context and an overview are essential at the outset, because the criteria must be read consistently with governing statutes (especially RSA 541:3 and 4), which contemplate that “any person directly affected” by the DES’ order may apply for rehearing and, ultimately for judicial review. See also RSA 20-O:14 (“persons aggrieved” may appeal from the Council’s decision “in accordance with RSA 541”).²

CFNH’s standing to appeal the permitting of a power plant, emitting air pollutants in the neighborhood of many CFNH members, should be clear from a recent and closely analogous Supreme Court decision. Appeal of the Londonderry Neighborhood Coalition, 145 N.H. 201, 202 (2000). The Court held that the Londonderry Neighborhood

confirms that “any appeal of this decision shall be filed with the Waste Management Council.” See Decision on Proposed Revocation of Solid Waste Permit, NPLA No. 40-010, p. 92 (June 23, 2005) (copy attached as Exhibit A to CFNH’s Notice of Appeal).

In addition, the Rules state that “[t]he parties to an appeal of the *issuance* of a permit shall be: (1) The person who filed the appeal; (2) The department; (3) The permit holder, if not the appellant; and (4) Any person allowed by the council to intervene.” Env-WMC 204.06(c) (emphasis added). Clearly, then, the rules contemplate that the appellant may be someone other than the department, permit holder or persons allowed to intervene by the WMC.

² If the right to appeal to the Council were narrower than the right to seek reconsideration and judicial review under RSA 541: 3 and 4, then the Council would face the odd situation where it would refuse to hear from an intervenor who will be entitled to appeal its decision. That would defeat the purpose of presenting both sides to the Council, so that the Council can address the arguments before the Court does.

Coalition, which had intervened in an application of a utility to construct and operate a natural-gas power facility, had standing to appeal the agency's adverse ruling:

We first address LNC's standing. In order to have standing to appeal a decision of an administrative agency denying a motion for rehearing, an appellant must demonstrate that the appellant has suffered or will suffer an injury in fact. Appeal of Richards, 134 N.H. 148, 154, 590 A.2d 586, 589 (1991), cert. denied, 502 U.S. 899, 112 S.Ct. 275, 116 L.Ed.2d 227 (1991).

LNC intervened in this matter because it asserted that the operation of AES's power plant, in close proximity to Londonderry's residential neighborhoods, would affect the value of homes owned by LNC members, thus directly affecting their economic interests. Because EFSEC could have found that LNC's members have suffered or will suffer a direct economic injury as a result of the decision approving AES's application, LNC has standing to pursue this appeal. See RSA 541:3 (1997).

The Londonderry decision – and Env-WMC 204.02(b)(5) itself – follow settled principles of standing, which require a showing that the appellant's own interests are affected, not just those of the general public, **but do not require more.** Appeal of Richards, 134 N.H. 148, 155, cert. denied, 502 U.S. 899 (1991) (“Unlike the plaintiff in Blanchard v. Railroad, in which “[t]he only interest alleged to have been infringed by the order is that of the public,” [86 N.H. 263] at 264 (1933), ... Hilberg alleges that he, and CRR alleges that its ratepayer members, will suffer a direct economic injury.”). A similar rule applies to appeals of zoning decisions. Smagula v. Town of Hooksett, 149 N.H. 784, 787 (2003) (“[O]wners of property, wherever located, may contest a decision made by a municipality's zoning board of adjustment or planning board so long as they have a ‘sufficient interest’ in the outcome. See Weeks Restaurant Corp. v. City of Dover, 119 N.H. 541, 544-45 (1979).”). The Weeks Restaurant case also demonstrates that standing is not limited to landowners whose property physically abuts the locus at issue.

Note that, as in Appeal of Richards, the fact that the general public is also injured will not defeat standing. In that case, the petitioners were challenging the electric rates set for the state's largest utility, which, of course, affected a very large segment of the general public. Since the petitioners themselves would have to pay the increased rates, they had standing.

II. CFNH MEETS THE APPLICABLE STANDARD

A. CFNH And Its Members Have The Requisite Interest, Distinct from the Effect of the Facility Upon the General Public.

CFNH has approximately 25 members, including many Hopkinton residents living in close proximity to the Bio Energy/Regenesis solid waste facility at 1994 Maple Street, Hopkinton ("the Facility"). For instance, one of CFNH's members, Martin Grady, lives at 1468 Maple Street and owns the parcels identified as assessor's map 218, lots 2, 3 and 60 on Maple Street, abutting the adjacent properties owned by a corporate affiliate of the Facility's owners/operators. CFNH members Roger and Norma Andrus (197 Rolfe Pond Drive, Map 210, Lot 16) also abut property of the same affiliate.³ CFNH members Edward, Beverly and Michael Close (74 Clement Hill Road, Map 210, Lot 29), Susan Allen (61 Bailey Road), Heston Scheffey (195 Kast Hill Road, Map 210, Lot 5), James and Beth Munroe (174 Clement Hill Road, Map 210, Lot 17) and Jack and Lisa Ostrander (191 Clement Hill Road, Map 210, Lot 12) also live in the immediate vicinity of the Facility. See Decision, p. 67, Findings 73-75; Intervenor's Exhibit 146 (records from Hopkinton Assessor's office); attached Affidavits.

³ Stonynook Farm, Inc. (47 Emerson Hill Road; Map 210, lot 15) is in the same abutter status as Martin Grady and Mr. and Mrs. Andrus.

To facilitate understanding of where these CFNH members live, Exhibit A to this memorandum is a color-coded chart, outlining the Facility's property in yellow, Regensis' affiliates' property in light blue, direct abutters who are not affiliates in green and abutters to affiliates in purple. The Grady and Andrus properties are therefore shown in purple. As shown in the record and on the attached chart, these and other CFNH members are not mere members of the general public; they are bona fide neighbors of the facility, affected like no others. CFNH's members – and, in particular, those who live in close proximity to the Facility – will suffer direct and adverse effects as a result of Presiding Officer Walls' Permit Decision in a way that is more than any impact of the decision on the general public (see affidavits attached as exhibits hereto).

For that reason, the Presiding Officer ruled on December 22, 2004, that CFNH “represent[s] persons allegedly affected by the operation of the Regensis facility in Hopkinton.” CFNH based its intervention upon its claims of injury to its members from the operation of a facility that would emit lead and other pollutants into the air in the neighborhood of CFNH members. No party opposed CFNH's intervention, and the Presiding Officer allowed it. This situation is the same, in all material respects, as the one found in Londonderry, 145 N.H. at 201 to demonstrate standing.

Indeed, Regensis stipulated to CFNH's standing below for purpose of this proceeding, which eliminated the need to present detailed evidence to support the allegations of impacts upon CFNH's members. Transcript II-198 to 199. However, since the Council has requested argument on the issue of standing on appeal, CFNH offers the affidavits of CFNH members, which show in no uncertain terms that the Facility's solid

waste operations will have an impact upon those CFNH members living close to the Facility:

The equities also support standing. The Presiding Officer allowed intervention by both CFNH and REACH because, among other things, CFNH had described its “active participation . . . in the legal and regulatory issues surrounding the Regen[e]sis facility” and intervention “will further the interests of justice . . .” This reflected CFNH’s petition, which alleged:

Indeed, Bio Energy . . . has already argued in the CFNH Action [pending in Merrimack County Superior Court] that CFNH should have availed itself of a revocation proceeding like the present one. DES, through its litigation counsel in the Attorney General’s office, has argued in the CFNH action that CFNH has a remedy because it can ask for intervention in this proceeding and be heard. See Motion of [DES] To Dismiss, dated December 1, 2004 in the CFNH action, at pages 3 and 6, citing RSA 541-A:30-32, Env-Wm 306.03-306.05 and other authority.

Later, the Presiding Officer found (Decision, p. 20, ¶ 130) that the CFNH action “first spelled out the concerns that ultimately led DES to issue the notice of proposed revocation.” CFNH thus was responsible for bringing these issues to a head. To deny CFNH its rights to press its arguments on appeal would correspondingly undermine “the interests of justice” identified by the Presiding Officer.

The Presiding Officer’s allowance of CFNH’s motion to intervene in the administrative proceedings related to the Permit Decision⁴ and CFNH’s active participation in those proceedings has significance in and of itself in establishing CFNH’s interest at the appellate stage. See New Hampshire Practice, Vol. 4, pp. 132-133, § 6.23 (1997) (“Once a person has been allowed to intervene, as a party, he has all

⁴ See Order on Motions to Intervene (December 22, 2004).

the rights of a party in the case as it then exists and thereafter develops (emphasis added) (citing In re Petition for Admission of Demers, 130 NH 31 (1987) (the Superintendent of the State Hospital petitioned to intervene in an involuntary commitment proceeding after the entry of an order of commitment imposing special conditions on him; the Supreme Court recognized that the Superintendent became a party to the proceeding after being allowed to intervene and was thereby authorized to pursue a direct appeal of the order and of the court's refusal to reconsider it)).

Moreover, one of the issues in this case is whether Regenesis was, is and will be obliged to notify Mr. Grady, Stonynook Farm, Inc., the Andrus's and others abutting land held in common ownership with the Facility (through affiliated corporations). They did not receive notice. Stipulated Facts as to Abutter Notification Issues, ¶¶ B.2 & B.6 and C.2 & C.6. CFNH asserts that persons owning such abutting land are entitled to individualized notice, sent to each of them, of the proceedings on any license or modification affecting the facility. It does not assert that the general public has any entitlement to personal, individualized notice. By definition, this issue plainly distinguishes the interests of certain members of CFNH from the general public. Both Regenesis and DES deny that Mr. Grady and others similarly situated are entitled to such notice, and Presiding Officer Walls so held. CFNH's standing to appeal this ruling could not be clearer.

In addition, CFNH is the plaintiff in Citizens for a Future New Hampshire v. Bio Energy, LLC, Merrimack County Superior Court No. 04-E-387. See Decision, p. 7, finding 50-51. After institution of the lawsuit, DES filed the Notice of Proposed License Action ("NPLA") that gave rise to this proceeding. DES and Regenesis then moved to

stay the Court action while DES adjudicated the issues arising under the NPLA (as later amended). CFNH's rights to litigate in Court are therefore inextricably bound up in this administrative proceeding.

B. CFNH Has Standing to Assert the Rights of Its Members

Associations have standing to assert rights possessed by one or more of their members. The Supreme Court has stated that "an association has no standing to challenge an administrative agency's action based upon a 'mere "interest in a problem."' Sierra Club v. Morton, 405 U.S. 727, 737 (1972). It does, however, have standing to represent its members if they have been injured. Id." Appeal of Richards, 134 N.H. at 154, 155 (1991).

Thus, in Appeal of Richards, the Court held that the Campaign for Ratepayers Rights ("CRR") had standing to challenge a rate agreement established under RSA chapter 362-C. Id. In that case, CRR represented ratepayers whose increased electrical rates as a result of the rate agreement constituted a direct economic injury. Id. at 156-57. Similarly, in New Hampshire Bankers Ass'n v. Nelson, 113 N.H. 127, 128 (1973), the Supreme Court concluded that the New Hampshire Bankers Association (NHBA) had standing to challenge the banking commissioner's determination that savings banks could issue N.O.W. accounts because NHBA's members, who were also directly regulated by the commissioner, would suffer direct injury because the determination increased their competitors' product lines. See also Border Brook Terrace Condominium Association v. Gladstone, 137 N.H. 11 (1993)(condominium association had standing).⁵ Compare Appeal of Campaign for Ratepayers Rights, 142 N.H. 629, 632 (1998)(finding no

⁵ Border Brook makes clear that it is immaterial that the association came into existence after the events that affect its members.

standing where the members' injury was indirect and would only result from a future ratemaking proceeding).

There appears to be no dispute that CFNH's purposes include addressing the types of issues present in this case. See Sierra Club, 405 U.S. at 739. It is a non-profit corporation dedicated to protection of the environment of New Hampshire and the public health of New Hampshire citizens.

C. The Decision Produces A Direct and Adverse Impact Upon CFNH and its Members.

The second prong set forth in the regulation's example of how to show standing ("for instance") is that "the appellant will suffer a direct and adverse [e]ffect as a result of the decision". Env-WMC 204.02(b)(5). CFNH's situation meets this description, as well.

CFNH simply did not obtain the order that it sought from the Presiding Officer. CFNH did not only seek revocation of the permit on a basis that arguably may be cured; it sought a ruling that the Applicant lacked the reliability and integrity to operate a solid waste facility – a ruling that would have disqualified Regensis and its principals from future licensure, because the Applicant's reliability and integrity are prerequisites for issuance of any permit. See RSA 149-M:9, IX(a); 149-M:12, III; Env-Wm 306.04(a), 306.05(a). CFNH thus sought a decision that would revoke the license with prejudice to future applications by the parties involved in the Regensis operation (and that of related corporations), not one that was essentially "without prejudice." Moreover, as demonstrated by the history of this case, once a permit is issued, it may be some time before revocation occurs – and Regensis could operate and pollute in the meantime. Now is the only time to stop this process once and for all.

CFNH also sought to participate through discovery and cross-examination into issues deemed by the Presiding officer to be material, including the “advice of counsel”, as well as on issues bearing upon “reliability and integrity”, but not included by the Presiding Officer in the proceeding. It sought rulings for the present, and the future, that would entitle its members living nearest the facility a right to individualized notice of all permits and modifications affecting the facility.

The fact that the Presiding Officer’s order is essentially “without prejudice” does not vitiate CFNH’s appeal rights. Even in a more difficult case for the petitioner, the Supreme Court has nevertheless found jurisdiction and reversed and remanded an agency order. Petition of Terry M. Bennett (New Hampshire Insurance Department), 151 N.H. 130 (2004). In that case, the petitioner challenged “the order of an insurance department hearing officer dismissing, without prejudice, a notice of hearing issued by the insurance commissioner.” The hearing officer’s “without prejudice” disposition allowed for future proceedings upon an amended complaint. While the Court in Bennett observed that there was no statutory right of appeal, because the Commissioner himself issued no appealable “order,” the Court nevertheless treated the petition as a petition for certiorari, considered the matter on the merits and granted relief, reversing the hearing officer’s dismissal. If the Court – with its relatively limited jurisdiction – may reverse a dismissal without prejudice, then certainly the Council, as final agency decision-maker, can do the same. This principle applies to this case by analogy, because Presiding Officer Walls has revoked Regenesys’ permit, but only in a manner that is without prejudice to Regenesys’

reapplication and to CFNH's ability to oppose a reapplication on the broader grounds (particularly, the applicant's lack of reliability and integrity) alleged in this appeal.⁶

In truth, the Council, as an administrative body, has greater supervisory power over DES than a Court would. It is not restricted by concepts of separation of powers; it is just as much part of the executive branch as DES. It need not engage in judicial deference. The whole point of the Council is to have input from a well-qualified group of decision-makers representing diverse perspectives. Undoubtedly that is why the concept of standing discussed in Env-WMC 204.02(b)(5) is stated flexibly, with a non-exclusive "example" of how to show standing. The Council has the power to "hear and decide all appeals from department decisions relative to the functions and responsibilities of the division of waste management, in accordance with RSA 21-O:14" See RSA 21-O:9, V. The Legislature has not limited that power, except to make the Council's jurisdiction appellate. An administrative appeal, however, need not, and should not, be based upon unduly narrow concepts of jurisdiction, for that would undermine the Council's role as final agency decision-maker and make DES's presiding officer's decision effectively the last word.

CONCLUSION

For the above reasons, the Council should accept CFNH's appeal and grant its petition to intervene in Regensis' appeal, because CFNH has standing and is adversely affected by the ruling below in several ways.

⁶ Indeed, if CFNH's appeal is at risk, because of the possibility of future proceedings, so is Regensis' appeal. As it stands, Regensis presumably could refile for the same permits, which, if granted, would moot all issues contained in Regensis' appeal. CFNH would have to mount all the same arguments all over again on appeal from such a Permit. The more sensible approach is to address these issues now, rather than allow the possibility of future, duplicative proceedings.

Respectfully submitted,

Citizens for a Future New Hampshire,
by its attorneys

COPY

Jeffrey L. Roelofs, Esq. (NH Bar #16015)
ANDERSON & KREIGER LLP
43 Thorndike Street
Cambridge, MA 02141
(617) 252-6575

Date: October 31, 2005

CERTIFICATION

I hereby certify that a copy of the foregoing Opposition has on this 31st day of October, 2005 been forwarded, via first class mail, postage prepaid, to:

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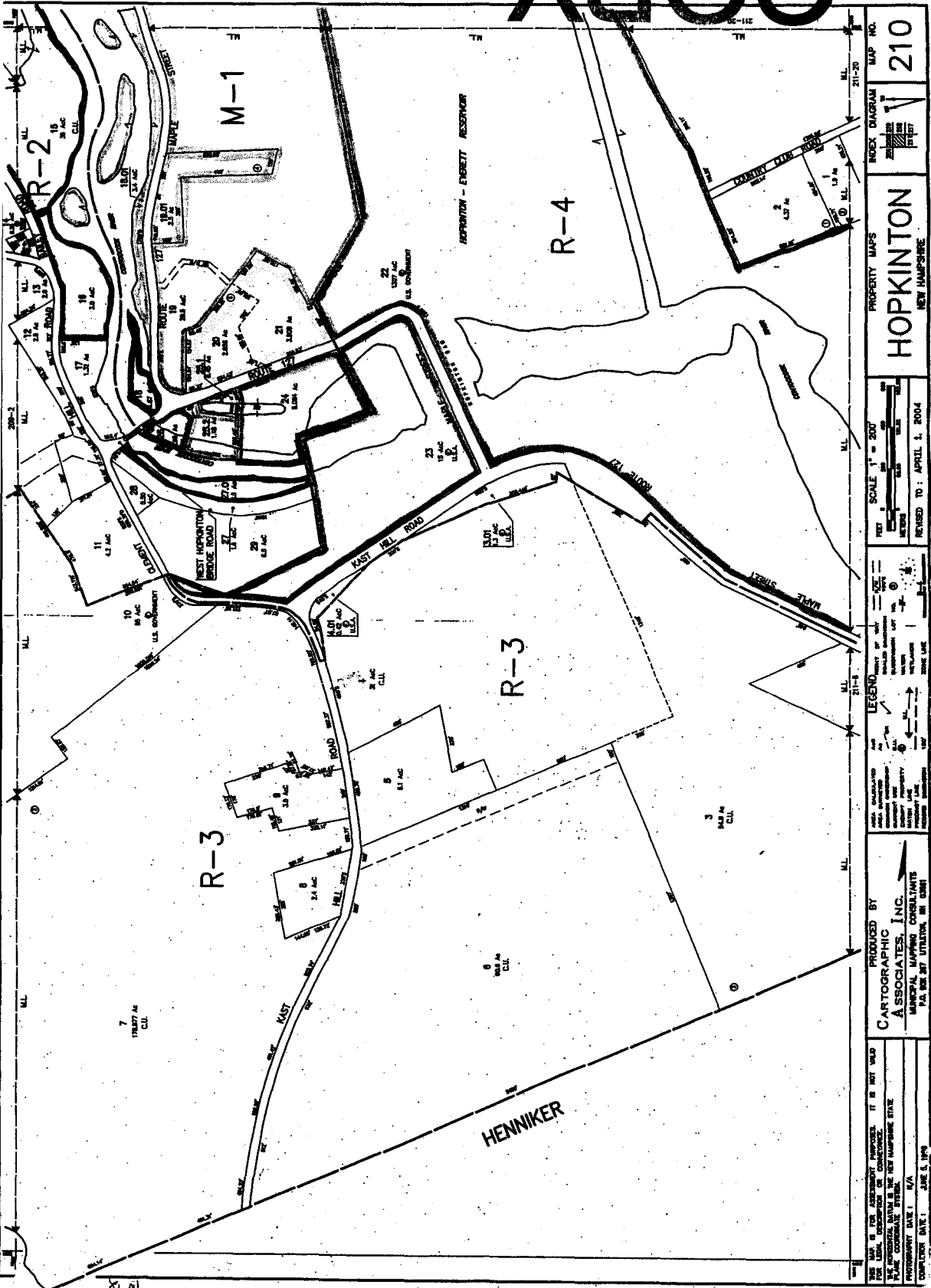
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Jeffrey L. Roelofs

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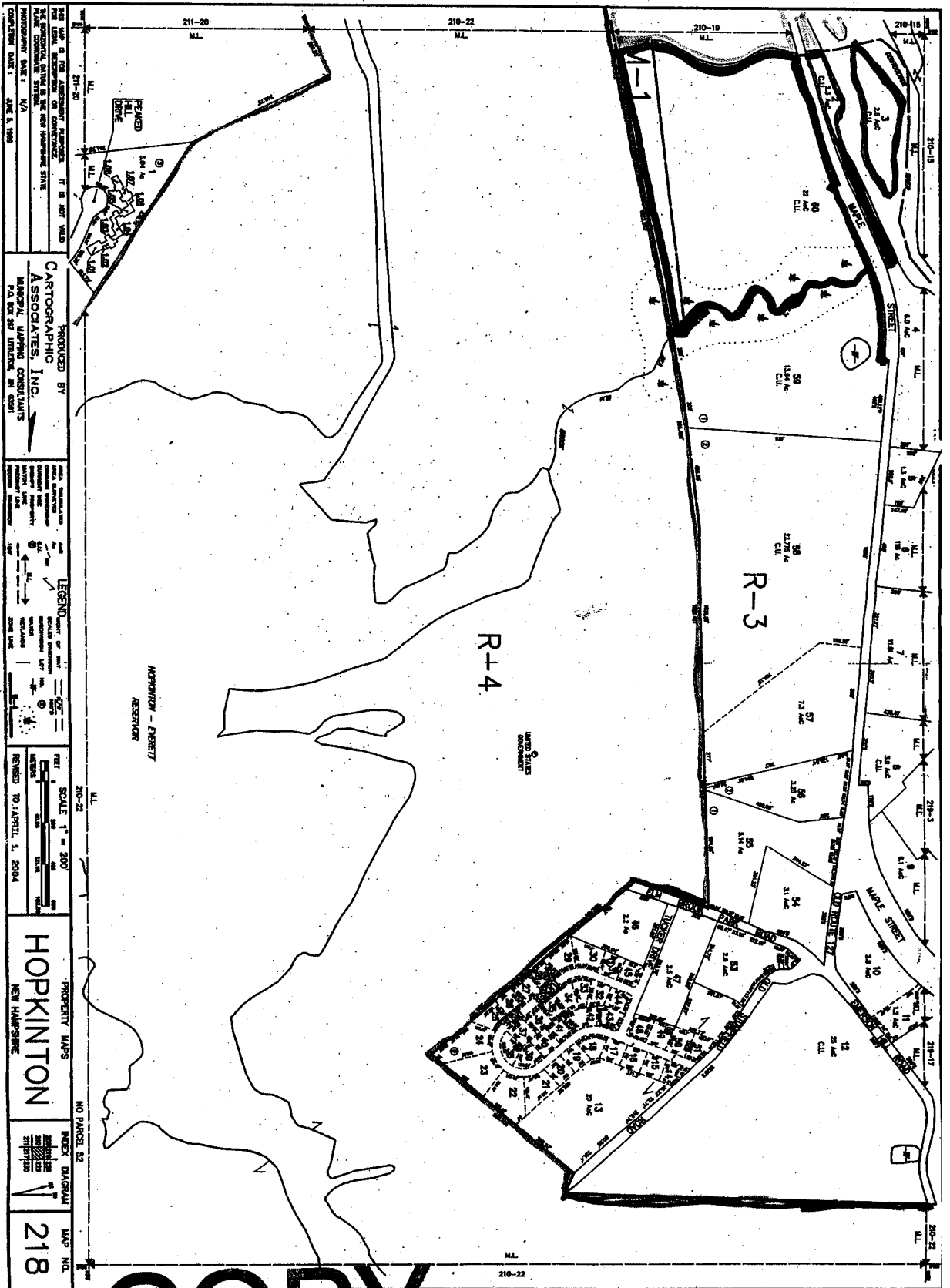
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= BE LLC
= Affiliate
= Direct Affiliate
= Not Affiliate
= Another Affiliate

INDEX DIAGRAM		MAP NO. 210
PROPERTY MAPS		HOPKINTON
SCALE 1" = 200'		REVISION TO: APRIL 1, 2004
LEGEND		PRODUCED BY CARTOGRAPHIC ASSOCIATES, INC. A ASSOCIATES, INC. MINNEAPOLIS, MINN. 55401 P.O. BOX 207 UTILITY, NH 03881
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REGENESIS CORPORATION)	WMC NO.: 05-09-WMC
1994 Maple Street)	05-10-WMC
West Hopkinton, NH 03229)	05-11-WMC
)	
)	APPEAL OF LICENSE
)	REVOCATION
Re: Solid Waste Permit No. DES-SW-SP-002)	
Regenesi Corporation)	DES DOCKET NO. 04-010
West Hopkinton)	
)	

I, Judy Johnson, hereby depose and state as follows:

- CFNH is a non-profit corporation dedicated to protection of the environment of New Hampshire and the public health of New Hampshire citizens. Its corporate address is 580 Brockway Road, Hopkinton, New Hampshire 03229.

3. CFNH has approximately 25 members, including Hopkinton residents who live and/or own property in close proximity to the Bio Energy solid waste incineration facility at 1994 Maple Street, Hopkinton. Those nearby residents who are members of CFNH include, among others, the following:

Edward, Beverly and Michael Close (74 Clement Hill Road)

Susan Allen (61 Bailey Road)

Martin Grady (1468 Maple Street)

Heston Scheffey (195 Kast Hill Road)

James and Beth Monroe (174 Clement Hill Road)

Jack and Lisa Ostrander (191 Clement Hill Road)

Signed under the penalties of perjury this 26th day of October, 2005.

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July 10, 2005

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)	WMC NO.: 05-09-WMC
REGENESIS CORPORATION)	05-10-WMC
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)	APPEAL OF LICENSE
)	REVOCATION
Re: Solid Waste Permit No. DES-SW-SP-002)	
Regenesi Corporation)	DES DOCKET NO. 04-010
West Hopkinton)	
)	

I, Susan Allen, hereby depose and state as follows:

- I am the owner of property located at 61 Bailey Road in Hopkinton, New Hampshire (the “Property”) – which is in close proximity to the Bio Energy solid waste incineration facility at 1994 Maple Street, Hopkinton (the “Facility”). I have lived at the Property since 1993.

3. When the Facility was operating several years ago, those operations had a direct and substantial impact on my Property. Among others, (1) the Facility was (and is) directly visible from the Property, including the smoke stack and smoke from the smoke stack, and, when the leaves are down, the plant and associated equipment and vehicles; (2) the Facility generated noise levels that were significant and offensive at the Property, including noise associated with the warning signals on backing vehicles/equipment, the turbines, and air pressure releases, and (3) the Facility is believed to have been the source

of soot that was frequently deposited on my Property (which deposits I have not observed since the Facility operations ceased).

4. Any future operation of the Facility as a solid waste incinerator is expected to result in similar, but also more significant impacts to me and my Property – including direct and indirect impacts related to the air and water pollution, noise, aesthetics (due to visibility of the operations), and impairment of my Property value.

Signed under the penalties of perjury this 27th day of October, 2005.

COPY

Susan Allen

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